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**DEC 19 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Aguilar et al. :  
Application No. 09/159,481 : DECISION ON PETITION  
Filed: 23 September, 1998 :  
Atty Docket No. 8183-019-999 :

This is a decision on the petition filed on 29 December, 2004, under 37 CFR 1.137(b),<sup>1</sup> to revive the above-identified application.

<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The Office apologizes for the delay in responding to the present petition.

The petition is GRANTED.

The application became abandoned on 26 September, 2003, for failure to timely submit a reply to the non-final Office action mailed on 25 June, 2003, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 10 March, 2004.

Petitioner has filed a request for reconsideration as the required reply to the Office action.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.<sup>2</sup> In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The revocation and power of attorney by assignee filed with the present petition cannot be accepted because petitioner has not provided documentary evidence of the chain of title from assignee of record Voxware, Inc. ("Voxware") to Ascend Communications, Inc. ("Ascend"). The showing of record is that the application was assigned by applicants to Voxware and that Ascend, et al., was acquired by putative assignee Lucent Technologies, Inc. Petitioners must provide a documentary showing that Voxware was acquired by Ascend.

MPEP 324 states, in pertinent part:

In order to request or take action in a patent or trademark matter, the assignee must establish its

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<sup>2</sup> See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

- (i) Documentary evidence of a chain of title from the original owner to the assignee ( e.g., copy of an executed assignment). The documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office; or
- (ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

The change of correspondence address filed on 29 December, 2004, cannot be accepted because it was not signed by an attorney of record.<sup>3</sup> There is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be mailed. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

It is noted that petitioners have submitted a five (5) month extension of time with the present petition. In this regard, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.<sup>4</sup> As the extension of time filed on 29 December, 2004, was filed after the maximum extendable period for reply to the Notice mailed on 25 June, 2003, the fee is unnecessary. As such, the \$2,610.00 paid on 29 December, 2004, will be credited to counsel's deposit account, No. 08-0750.

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<sup>3</sup> See MPEP §§ 601.03 and 405.

<sup>4</sup> See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

This application is being referred to Technology Center 2600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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